Holding European Political Parties Accountable – Testing the Horizontal EU Values Compliance Mechanism

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Last September, we wrote to the European Parliament and the Authority for European Political Parties and European Political Foundations (hereinafter: the Authority) asking them to check the continuous compliance of two European political parties with the basic European values laid down in Article 2 TEU. In doing so, we pioneered the use of the rather obscure horizontal EU values compliance mechanism that complements the better known, yet not more successful, Article 7 TEU vertical EU values oversight mechanism.

We acted on a pro bono basis on behalf of The Good Lobby, a public interest civic start up committed to democratising access to the many avenues of participation open to EU citizens and organisations.

Our action focused on the following two European political parties: the European's People Party (hereinafter: EPP) and the Alliance of Conservatives and Reformists in Europe (hereinafter: ACRE) and was based on EU Regulation 1141/2014 on the Statute and Funding of European Political Parties and European Political Foundations as recently amended by Regulation 2018/673 (hereinafter: the Regulation). This Regulation was originally introduced to increase the visibility, recognition, effectiveness, transparency and accountability of European political parties and their affiliated political foundations.

Our main assertion was that both the EPP and ACRE no longer complied with the conditions laid down in the Regulation and, in particular, the provision which requires each European political party "to observe, in particular in its programme and in its activities, the values on which the Union is founded, as expressed in Article 2 TEU, namely respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities". Given the intricacies of this procedure, we ended up having to deal with both the Authority and the EP administration and political leadership itself.

With respect to the EPP, we argued that the EPP failed to continuously comply with this condition since at least the adoption of the Tavares report in 2013. It would have done so by deliberately and persistently refusing to take any concrete action against one of its member parties, Hungary's ruling party *Fidesz*, notwithstanding its systemic and persistent undermining of Article 2 TEU values as evidenced *inter alia* by the Sargentini report (since then the EPP has "semi-suspended" *Fidesz* last March).

With respect to ACRE, we submitted that this Europarty (along with the parliamentary group known as the ECR group with which ACRE is affiliated) had similarly failed to continuously comply with the same condition. This would have occurred at the very least since the activation of the pre-Article 7 procedure by the European Commission in January 2016, when ACRE has deliberately and persistently refused to take any concrete action against one of its member parties, the Law and Justice party, Poland's ruling party, notwithstanding its systemic and persistent undermining of Article 2 TEU values.

In more concrete terms, with respect to the Parliament, we requested it – for the first time it would seem – to lodge with the Authority a request for verification of compliance by both the EPP and ACRE with the Regulation. The legal basis for our request is found in Article 10(3) of the Regulation which, following amendments introduced in May 2018, states the following:

> The European Parliament, acting on its own initiative or following a *reasoned request from a group of citizens* [our emphasis], submitted in accordance with the relevant provisions of its Rules of Procedure … may lodge with the Authority a request for verification of compliance by a specific European political party … with the conditions laid down in point (c) of Article 3(1) and point (c) of Article 3(2) …

With respect to the Authority, the legal basis of our request was Article 10(1) and an additional paragraph of Article 10(3). In a nutshell, we submitted that the Regulation requires the Authority "to regularly verify that the conditions for registration" including the condition of continuing observance of the EU's basic values, and does not prevent individuals or groups from bringing to the attention of the Authority any facts which may give rise to "doubts concerning compliance by a specific European political party" with these conditions.

This interpretation was, in our view, warranted, considering the phrasing used in Article 10(3): "Where the Authority becomes aware of facts which may give rise to doubts concerning compliance…". We therefore argued that by the letters we sent to the Authority and the references therein, the Authority should be considered to have been made aware of facts substantiating a possible "manifest and serious breach" of the values laid down in Article 2 TEU by both the EPP and ACRE. This could have justified the Authority acting *sua sponte*, even without the express request by the European Parliament under Article 10(3).

Below, we will briefly outline the replies we received from the Authority before focusing in more detail on how the President of the Parliament has – in our view – repeatedly and arbitrarily sought to prevent us from exercising the right the Parliament itself provided when it agreed with the Council to amend Regulation 1141/2014 in May 2018 as described above.

1. Our dealings with the Authority

The Authority promptly replied to our letters sent in September 2018. It did not, however, consider itself under any obligation to undertake a 'verification of compliance' of the EPP and ACRE's continuing observance of Article 2 TEU values as we requested.

With reference to Article 10(3) of the Regulation, the Authority first noted that it can only act on the basis of a request submitted by the Parliament, the Council or the Commission.

With reference to our argument that the Authority has an obligation to act when it is being made aware of facts capable of substantiating a possible manifest and serious breach of the values on which the EU is founded, the Authority replied that the information we provided "is in the public domain, being debated at national, European and international level" and as such, "does not, therefore, make the Authority aware of that information" (sic).

This resulted in the Authority concluding that our two original letters, from September 2018, did not set in motion any formal procedure under the Regulation.

While the Authority's first point might be questionable, the Authority's claim that it would be obliged to act "only in consequence of a request lodged by" the Parliament, the Council or the Commission appeared to us *contra legem*. We, therefore, asked the Authority to reconsider its interpretation of the relevant provision ("Where the Authority becomes aware of facts which may give rise to doubts concerning compliance…") in light of the following considerations:

Firstly, Regulation 1141/2014 as amended by Regulation 2018/673, does not, in any way, provide that information "in the public domain" cannot be used in support of a verification request addressed to the Authority.

Secondly, the Authority did not explain how it understands "public domain", the legal basis for the use of the "public domain" criterion, or more generally the circumstances under which the Authority may be considered as becoming aware of facts which may give rise to doubts concerning compliance with Article 2 TEU.

Thirdly, since the Authority seemingly accepted that the information we provided to it was *already* "in the public domain", why hadn't the Authority already undertaken a verification of both the EPP and ACRE's compliance with Article 2 TEU on the basis of this information?

Is the Authority not under a legal obligation to act after acknowledging that such information not only exists but the Authority is aware of it?

Fourthly, we submitted that the Authority was under a special legal obligation to interpret its duties in light of the EU principle of *effet utile*. At the time, it was impossible for groups of citizens to exercise the right granted to them by the amended Regulation insofar as the Parliament had not yet amended its Rules of

Procedure so as to define how citizens might have submitted a reasoned request to it (this was done only a few months later, on 31 January 2019).

By a letter dated 30 October, the Authority declined to answer. We were instead told to “rest assured that the Authority is committed to discharging the mandate that was conferred on it” by Regulation 1141/2014. Unfortunately, given its permanent inaction, one may reasonably doubt this statement holds true.

Therefore, following this reply, we decided to give up on the Authority. We focused instead on activating the new option given to a group of citizens to submit a reasoned request to the Parliament.

2. Our dealings with the Parliament (September 2018-January 2019)

As previously noted, two “reasoned requests” within the meaning of Article 10(3) of Regulation 1141/2014 were submitted to the Parliament in September 2018. The first reasoned request targeted the EPP, while the second request concerned ACRE. Following a gentle reminder from us, our requests were acknowledged on 10 October before being denied on 17 October on the *sole ground* that the European Parliament had yet to amend its Rules of Procedure.

While it is indeed correct that Article 10(3) conditions the admissibility of a reasoned request from a group of citizens on the respect of “the relevant provisions of its Rules of Procedure”, we replied that the Parliament cannot plead its own failure to amend its procedural rules to violate a procedure it has itself adopted as co-legislator. We also emphasised the absence of any mention to Article 10(3) in the “transitional provision” inserted by Regulation 2018/673.

This situation qualifies as a manifest instance of maladministration. Yet – as of today – the EU Ombudsman has failed to come to such a conclusion following our pending complaint with her office.

The Parliament subsequently replied by asking us for more time so as to be able to “examine [our] argumentation together with the Legal Service of the European Parliament”.

On 20 November, we were provided with an update on the forthcoming revision of the Parliament’s Rules of Procedure, including the modalities under which citizens may request the compliance of a political party with the Union values to be verified. However, at that time, no information was provided on the previously promised legal assessment of our September reasoned requests by the legal service of the European Parliament. This legal assessment was finally provided to us via the Citizens’ Enquiries Unit on 7 January 2019:

> Article 10(3) of the Regulation grants the Parliament a certain margin of political discretion as regards the way in which the future internal procedure will be shaped. In this context, the future rules will have to clarify those

> aspects of the procedure, and notably matters of admissibility of requests, which, under the Regulation, have not yet been regulated in an exhaustive way. As an example, the term “group of citizens” requires, by its very nature, legal clarification in order to make the said procedure operational.

This “political discretion” herewith invoked is, however, without any legal foundation as the Regulation does not foresee any transitional regime regarding the entry into force of Article 10(3). If one were to follow the European Parliament’s reasoning, it would mean asking citizens to wait until the Parliament finds it agreeable to amend its rules of procedure in order to be able to exercise a right the Parliament, acting as co-legislator, previously granted to them. Needless to say, when the respect of EU values is at stake, time is of the essence.

Be that as it may, we were also informed by the Citizens’ Enquiries Unit that “the applicable procedures will be put in place shortly and that from that moment onwards, groups of citizens under the applicable rules will be entitled to lodge reasoned requests for verification”.

Fast forward four months later and we are still waiting for the Parliament to act. It is not that the Parliament did not amend its Rules of Procedure shortly after this answer from the Citizens’ Enquiries Unit – it did on 31 January 2019, but the admissibility of the new reasoned request we submitted in February has since been denied on the basis of new, ever changing objections as will be shown below.

3. Our dealings with the President of the Parliament (February-April 2019)

At this stage, it may be useful to offer readers the text of the new rule inserted in the European Parliament’s rules of procedure and which is known as Rule 223a, the third paragraph of which provides as follows:

> On the basis of the first subparagraph of Article 10(3) of Regulation (EU, Euratom) No 1141/2014, a group of at least 50 citizens may submit a reasoned request [our emphasis] inviting Parliament to request the verification mentioned in paragraph 2. That reasoned request shall not be launched or signed by Members. It shall include substantial factual evidence showing that the European political party or European political foundation in question does not comply with the conditions referred to in paragraph 2.
>
> The President shall forward admissible requests from groups of citizens to the committee responsible for further examination.
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> […]
>
> The group of citizens shall be informed of the outcome of the committee’s examination.

> Upon reception of the committee proposal, the President shall communicate the request to Parliament.
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> Following such a communication, Parliament shall, by a majority of the votes cast, decide on whether or not to lodge a request to the Authority for European political parties and European political foundations.
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> The committee shall adopt guidelines for the treatment of such requests from groups of citizens.

On the basis of this rule, we submitted a new reasoned request concerning both the EPP and ACRE – acting again on behalf of The Good Lobby – to the President of the European Parliament insofar as Rule 223a makes him responsible for the forwarding of admissible requests from groups of citizens. When it comes to finding reasons not to act, as we shall now explain, the President of the Parliament has proved rather inventive.

Reply dated 22 February 2019

In this reply to our reasoned request dated 11 February 2019, President Tajani and his chief of staff claimed that Rule 223a "requires the explicit support of at least 50 citizens, which have to be identifiable" and the demonstration of the citizens' "will". Accordingly, the admissibility of our reasoned request was denied as it was submitted on behalf of the 12,000 members of The Good Lobby who had constantly been informed via an internal newsletter.

Notwithstanding the fact that Rule 223a does not speak of "explicit support", it makes no mention of the notions of "identifiable" or citizen's "will" – notions which President Tajani furthermore left undefined; we subsequently provided the names, emails, nationality and country of residence of each of the required 50 citizens. Those who expressly accepted to be signatories of our reasoned request via email.

Reply dated 18 March 2019

In this reply, the cabinet of President Tajani asked us (for the first time) to provide the "necessary signatures". This reply inaccurately alleges that it would have requested these in the reply dated 22 February (the word "signature", however, is never mentioned in it). In addition, we are requested (for the first time again) to comply with an alleged obligation to "prove" the "explicit will" of each of the 50 citizens. Adding insult to injury, the cabinet of President Tajani claimed to have explained the "applicable procedures" to us "in detail". This however reflects an original understanding of what "in detail" means as their "detailed" reply to us merely consisted of quoting Rule 223a followed by two paragraphs inventing new and vague admissibility requirements.

Notwithstanding the lack of any legal basis supporting the admissibility requirements referred to by the cabinet of President Tajani, we have set up an online form which was signed individually by more than the 50 required citizens and in which each explicitly expressed their support for our reasoned request.

Reply dated 30 April 2019

Once more, we were told by the cabinet of President Tajani that this was not sufficient to satisfy Rule 223a which would allegedly require the provision of "valid signatures" (requirement left undefined) in order to "give proof of the explicit will of a group of at least 50 citizens" (the notion of "explicit will" is also left undefined). For the cabinet, the online registration form and the contact details we provided were still not enough "to give any tangible proof of the will" of the required 50 citizens; the notion of "tangible proof" is used for the first time and is, as always, left undefined. Last but not least, we have been given until 16 May 2019 to satisfy such a *probatio diabolica* without any further explanations nor justifications as to why 16 May can be considered a valid deadline.

This response raises some serious issues under EU law:

Firstly, Regulation 1141/2014 does not require any specific modality to collect signatures, neither online nor offline. Unlike the Regulation implementing the citizens' initiative, it does not foresee procedures and conditions for the collection of statements of support. In these circumstances, the cabinet's interpretation of Article 10(3) of Regulation 1141/2014 as amended by Regulation 2018/673 and further detailed by Rule 223a lacks any legal basis.

Secondly, and leaving aside the fact that the cabinet of President Tajani is referring to admissibility requirements which are nowhere to be seen in Rule 223a, we are left unable to exercise the right given to us by the Parliament and the Council acting as co-legislators. Indeed, the Parliament never clarified in concrete and clear terms how to satisfy its ever-changing conditions, e.g. how to prove the "explicit" consent – or "will" to use the cabinet's phrasing – of each of the 50 citizens required to submit a reasoned proposal.

Lastly, it defies the principle of good administration for the cabinet of the President of the Parliament to ask us to satisfy requirements using notions not mentioned in relevant rules without making clear what one must do in practice to meet them both substantively and procedurally speaking. At the very least, one could expect the Parliament to provide citizens with a template and some clear guidelines to accompany the template.

What is worse, the interpretation given by the Parliament to the possibility for citizens to request for the verification of Europarties' continuing compliance with Article 2 values is itself against the spirit of the Regulation and its underlying rationale. While the point of the Regulation was to outsource it to an independent authority and a committee, the EP does not seem to hesitate to "reoccupy" the values assessment.

Yet as a matter of hierarchy of sources of law, the Rules of Procedure – that have been implementing the Regulation – are below the Regulation. Therefore, one may reasonably expect those rules to be developed and interpreted in the light of the Regulation's rationale.

One may also regret the lack of independence of an Authority of European Political Parties. Despite its formal autonomy, this institution has proved incapable of freeing itself from the political control of the administration to which it belongs: the European Parliament. Unless it will be able to do so, the Authority may risk failing to discharge its oversight duties foreseen by the Regulation.

4. What's next

After agreeing with the Council to grant a new right to "a group of citizens" to help it oversee the Europarties' compliance with EU values, the European Parliament and the competent Authority have manifestly failed to ensure the exercise of such a right. Having finally settled on the number of 50 citizens required to prompt the review, the European Parliament – as well as the Authority – left it to the President to act as the only gatekeeper of this horizontal oversight mechanism.

As shown above, this behaviour is legally questionable and the way in which our reasoned request has been processed manifestly qualifies as an instance of maladministration. Whether this is done deliberately to avoid embarrassment ahead of the European elections or whether this reflects a lack of appreciation by the President of the Parliament of his own prerogatives in arbitrarily interpreting the admissibility requirements, European citizens are left at the mercy of the will of one and only one individual. This defies not only the spirit but also the institutional design of a EU values verification mechanism, that entrusts to a dedicated Authority and committee of independent eminent persons the substantive verification of the respect of EU values.

This is the claim that is currently under the examination of the EU ombudsman following our complaint.
